Southern Ry. Co., a Virginia corporation, having complied with these provisions, was sued by a citizen of South Carolina in the courts of that state. *Held,* that the railway company was not a citizen of South Carolina, and was therefore entitled to a removal of the cause to the federal court. Gary, A. J., Pope, J., and Townsend, Circuit Judge, *dissenting.*

The weight of authority would seem to be with the dissenting opinion. In a Kentucky case it is stated that a foreign corporation does not become a corporation of that State by being licensed to do business in a State, but is suable as a non-resident; yet if a corporation is created by the adoption of a foreign corporation, its status is the same as if it had been originally incorporated by the State adopting it. *Uphoff v. Chicago R. Co.,* 5 Fed. 545. Alabama, Georgia, Pennsylvania, Virginia and West Virginia courts have upheld this view. *Contra, Markwood v. Southern Ry. Co.,* 65 Fed. 817. The two cases on which the opinion of the court is chiefly based are not wholly parallel to the case in hand. In one the plaintiff was herself a citizen of the State of the defendant's original incorporation. *R. R. Co. v. James,* 161 U. S. 545, 40 L. Ed. 802. In the other the plaintiff, as an Indiana corporation, sued a Kentucky corporation, although itself domesticated in Kentucky. *Louisville, etc., R. Co. v. Louisville Trust Co.,* 174 U. S. 552.

INJUNCTION—PUBLICATION OF LIBEL.—MARLIN FIREARMS CO., v. SHIELDS, 64 N. E. 163 (N. Y.).—Defendant published "fake" letters falsely attacking the quality of articles manufactured by plaintiff. Plaintiff brought bill in equity to enjoin further publication, alleging that he had no adequate remedy at law and that it was impossible to ascertain or prove special damages. *Held,* that publication could not be enjoined.

For a discussion of the principles involved, see XI *Yale Law Journal* 372, where the opinion of the Appellate Division, now reversed, was commented upon and adversely criticised.

INSURANCE—ADDITIONAL INSURANCE—ESTOPPEL.—RAUCH V. MICHIGAN MILLERS' INS. CO., 91 N. W. 160 (MICH.).—Where a policy holder took out additional insurance contrary to the terms of the policy, but notified the company which did not reply, *held,* that the company is estopped from claiming that the policy is avoided. Prant, J., *dissenting.*

No recovery can be had where additional insurance is taken out contrary to the terms of the policy. *Continental Ins. Co. v. Hullman,* 92 Ill. 145; *Ill. Mutual Fire Ins. Co. v. Fix,* 53 Ill. 151; *Germania Ins. Co. v. Klewer,* 129 Ill. 600. But the principle that the silence of the company indicates that it is willing to continue the policy, is well established in *Phoenix Ins. Co. v. Johnson,* 42 Ill. 66; *Ill. Fire Ins. Co. v. Stanton,* 57 Ill. 354; *Williamsburg City Ins. Co. v. Cary,* 83 Ill. 453.

JURISDICTION—STATE BOUNDARIES—ADJACENT WATERS.—LENNAN V. HAMBURG-AMERICAN S. S. CO., 77 N. Y. SUPP. 60.—*Held,* the New Jersey courts have jurisdiction of an offense committed on the seas within three miles of the New Jersey shore.

By the law of nations, every nation has exclusive jurisdiction to the distance of a marine league over the waters adjacent to its shores. *Church v. Hubbart,* 2 Cranch 234; *The Brig Ann,* 1 Gallis. 62. And over all bays wholly within the territory of the country which do not exceed two marine

leagues at the mouth. *Com. v. Gaines*, 2 Va. Cas. 172; *Direct U. S. Cable Co. v. Anglo-American Tel. Co.*, 2 App. Cas. 394. But the border States of the Union have their boundary lines co-existent with the national boundaries; and hence the State courts have the same exclusive jurisdiction over adjacent waters as over other parts of their territory, except in so far as jurisdiction has been expressly granted to the general government. *People v. Tyler*, 7 Mich. 161; *U. S. v. Bevans*, 3 Wheat. 336; *Com. v. Manchester*, 152 Mass. 230.

NEGLIGENCE—CONTRIBUTORY—CYCLIST RIDING IN A RACE—QUESTION FOR THE JURY.—BENEDICT V. UNION AGRIC. SOCIETY, 52 ATL. 110 (VT.).—In an advertised bicycle race for which prizes were offered and entrance fees charged, a racer lowered his head over his handle-bars so that he failed to see and avoid a sulky, driven on the track preparatory to the succeeding race. *Held*, that contributory negligence on rider's part was a question for the jury.

This appears to be an attempt to establish contributory negligence on a new state of facts which modern bicycle racing has made possible. As two inferences could be drawn from the facts, it was for the jury to decide as to plaintiff's conduct. *Hathaway v. East Tennessee, etc., R. Co.*, 29 Fed. 489; *Hart v. Hudson River Bridge Co.*, 80 N. Y. 622. As a matter of law he was not negligent. Had he been riding on the highway as he did in the race, the rule in *Butterfield v. Forrester*, 11 East 60, would have applied, but "he conformed to the rules laid down and followed by others in a similar line of business and, as a matter of law, that was all he could be asked to do.

PRIVATE NUISANCE—POWDER MAGAZINE—PROXIMITY TO DWELLINGS—EXPLOSION.—REILLY V. ERIE R. R. CO., 76 N. Y. SUPP. 620.—The plaintiff and her dwelling were seriously injured by the explosion of a large quantity of dynamite, stored in the powder magazine of the defendant, situated less than 100 feet from her own, and several other dwellings. On appeal, *held*, that the jury were justified in finding that the keeping of such a quantity of explosive, in such a locality, was a nuisance, irrespective of negligence.

This decision, making the character of the storage of explosives as a nuisance, depend upon locality and surrounding circumstances, and not upon negligence, follows the great weight of authority. *Heeg v. Licht*, 80 N. Y. 579; *McAndrews v. Collerd*, 42 N. J. L. 189. Some decisions go even farther, holding the keeping of gunpowder a nuisance *per se*. *Laflin Rand Powder Co. v. Tierney*, 23 N. E. 389. The dissenting opinion in the present case held that liability must depend on negligence in locating and storing the powder, and thus construed *Heeg v. Licht*, cited above. This is not the usual interpretation of that case, see *Cooley on Torts*, 723. The other cases cited in support of this novel view may be distinguished as referring to various kinds of business which only become nuisances through the negligent manner in which they are carried on. *Bohan v. Gaslight Co.*, 122 N. Y. 18; *Losee v. Buchanan*, 51 N. Y. 476.

SERVANTS—INJURIES—EMPLOYER'S LIABILITY—MAINTENANCE OF A SAFE WORKING PLACE.—MCLAINE V. HEAD & DOWST CO., 52 ATL. 545 (N. H.).—A servant, at work at the bottom of a deep trench into which earth was being dumped from time to time, was injured through the neglect of a foreman to give warning of the approach of one load. *Held*, that the employer, having provided a competent servant to give this warning, was not liable for the injury. Remick, J., *dissenting*.